SUPREME COURT, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1376

CHARLIE C. SPELLERS, and
CHARZEL S. SPELLERS,

Petitioners,

v.

STEUART MOTOR COMPANY,
t/a Triangle Motors,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

CHARLIE C. SPELLERS, and
CHARZEL S. SPELLERS,
Petitioners,
4305 – 19th Street, N. E.
Washington, D. C. 20018

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IN THE

Supreme Court of the United States

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No.

CHARLIE C. SPELLERS, and
CHARZEL S. SPELLERS,

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v.

STEUART MOTOR COMPANY,
t/a Triangle Motors,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioners, Charlie C. Spellers and Charzel S. Spellers, pray that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals rendered October 31, 1973 (Record pages 21-22).

OPINIONS BELOW

The judgment of the District of Columbia Court of Appeals, as yet unreported, appears at pages 21 & 22 of the certified record filed herein, reads in significant part –

> "This is an appeal from a summary judgment entered by the trial court in favor of appellee (defendant) and a denial of a motion for summary judgment made by the appellants (plaintiffs). We affirm the judgment of the trial court.
>
> Appellants sued appellee for wrongful repossession of an automobile. The trial court found that the repossession was accomplished pursuant to the terms of the conditional sales contract entered into between the parties and that said contract was not in violation of the laws of the District of Columbia.

* * * * *

The Memorandum Opinion and Order of the Superior Court of the District of Columbia appears at pages 5 through 8 of the record, and reads in pertinent part – pages 103-104:

> ". . . Upon the hearing of these Motions and the Court being fully advised and informed with respect to all matters relevant to this action the Court finds that there is no genuine issue of material fact with respect to the claims of these parties, and the Court finds that the plaintiffs' vehicle was repossessed pursuant to the terms and conditions of paragraph 8 of the conditional sales contract executed by the parties

> to this action which set out the terms and conditions of the transaction relating to the purchase by the plaintiffs and the sale by the defendant to the plaintiffs of the vehicle in question.
>
> The Court also concludes as a matter of law that paragraph 8 of the said contract is in conformity with and not in violation of the laws of the District of Columbia. See: D. C. Code §28:9-503 (1967 Edition).
>
> Therefore, the defendant is granted Summary Judgment dismissing the plaintiffs' Complaint. The plaintiffs' Motion for Summary Judgment is denied."

JURISDICTION

The Judgment of the District of Columbia Court of Appeals was entered October 31, 1973; and an Order denying Petition for Rehearing *En Banc* was entered November 20, 1973, Record page 30 –

> "On consideration of appellants' petition for rehearing *en banc*, and it appearing that no judge of this Court has called for a vote thereon, it is
>
> ORDERED that appellants' aforesaid petition is denied."

Jurisdiction of this Court is invoked under Title 28, United States Code Section 1257, as amended July 29, 1970, Public Law 91-358, Title I, Section 172(a)(1), 84 Stat. 590.

QUESTIONS PRESENTED

1. Whether or not the District of Columbia Court of Appeals has misconstrued or mis-applied an Act[1] of Congress and procedural regulations[2] promulgated pursuant thereto?; or

2. Whether or not the provisions[3] of the District of Columbia Uniform Commercial Code are subordinate[4] to the provisions of the District of Columbia Automobile Financing Act[5] and Procedural Regulations promulgated pursuant thereto?

3. Whether or not, a party to a conditional sales contract,[6] who is not in *para delicto* is entitled to recover damages?

---

[1] Public Law 86-431, 74 Stat. 72, April 22, 1960, Section 40-903 (c), D. C. Code, 1973 Edition, D. C. Motor Vehicle Financing.

[2] D. C. Rules and Regulations, Title 5AA, September 21, 1970, "Buying, Selling and Financing of Motor Vehicles", at page 16, Section 3.1(a) & (b), Matters to be Included in Contract.

[3] D. C. Code, Section 28:9-503 (1967 Edition) – Secured Party's Right to Take Possession After Default.

[4] D. C. Code Annotated, Sections 40-901 to 910 (1967). See also, Commentary: 37 George Washington University Law Review, at page 1079, footnote 77.

[5] See footnotes 1 & 2, *supra.*

[6] See Record page 2, D. C. Court of Appeals (Superior Court Record page 17(a)). The gravamen of the dispute–

"Salesman _____ No. _____."

4. Whether or not, punitive damages or exemplary damages is an independent[7] basis for recovery of damages in the District of Columbia for violation of a federal[8] right?

STATUTES AND REGULATIONS INVOLVED

There are no Constitutional issues involved in this proceeding. District of Columbia Code, 1973 Edition, Title 28, *Commercial Instruments and Transactions,* Section 28:9-203(2):

> "(2) A transaction, although subject to this article, is also subject to chapter . . . 9 of Title 40, relating to installment sales of motor vehicles, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

See *Commentary*: "Local Control of Retail Installment Sales", by Rothschild, 37 George Washington Law Review (1969), at page 1079, footnote 77.

District of Columbia Automobile Financing Act, Public Law 86-431, 74 Stat. 70. *Regulations Enforcement*: See D. C. Code, Section 40-902 (1973 Edition) –

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[7] *First National Realty Company v. Weathers,* (Mun. Ct. of Appeals, D. C., 1959), 154 A.2d 548; and *Wardman-Justice v. Petrie* 59 U.S. App. D. C. 262), 39 F.2d 512 (1939).

[8] *Basista v. Weir,* 340 F.2d, at page 87 (C.A. 3, 1965).

"(e)(1) The Commissioners are hereby authorized to make and enforce such regulations as they in their discretion deem appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions:

(i) governing the form and substance of instruments of security . . .

(iii) requiring that amounts due under instruments of security may be prepaid in full and that the unearned charges, whether for finance, insurance, or for other purposes, attributable to or resulting from such prepayments shall be refunded or credited . . .

Additional Regulations: See D. C. Code, Section 40-902 (1973 Edition) –

"(2) The Commissioners are further authorized, in their discretion, to make and enforce such additional regulations as they deem necessary to insure that purchasers of motor vehicles under instruments of security are not being required, directly or indirectly, to pay finance, insurance, or other charges in excess of those authorized by this Act or by the Commissioners pursuant to the authority vested in them."

Waiver Restrictions: See D. C. Code, Section 40-902, 74 Stat. 71 –

> "(f) No provision shall be inserted in any retail installment contract whereby the buyer waives or purports to waive any provision of this Act, and any such waiver or purported waiver shall be void and of no effect. The Commissioners are authorized in their discretion, by regulation (1) to prohibit the inclusion in any retail installment contract of any provision waiving or purporting to waive any provision of any regulation promulgated by the Commissioners relating to retail installment transactions, and (2) to provide that any such waiver or purported waiver, shall be void and of no effect."

Right to Bring Suit: See D. C. Code, Section 40-902, 74 Stat. 72 –

> "(c) Any person aggrieved by the violation of any law or regulation applicable to the licensee's conduct of the licensed activity shall have in addition to his right of action against such licensee, a right to bring suit against the surety on a bond authorized by this section, either alone or jointly, with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee, or of any officer, agent, employee, or other person acting on behalf of said licensee, which is in violation of law or regulation in force in the District relating to the licensed activity. The provisions of the second, third, and the fifth

subparagraphs of paragraph (b) of the first section of the Act entitled "An Act to grant additional powers to the Commissioners, and for other purposes", approved December 20, 1944."

REGULATIONS INVOLVED

District of Columbia Register, Special Edition, D. C. Rules and Regulations, Title 5AA, Department of Economic Development, Buying, Selling and Financing of Motor Vehicles, September 21, 1970, Washington, D. C. See D. C. Code, Sections 40-902(e)(1), (i), (iii), & (vi), 74 Stat., at pages 70 & 71:

Section 3.1(b), Title 5AA. *Matters to be Included in Contract,* at page 16 –

> "(b) The original and each copy of the completed invoice or of the retail installment contract, as the case may be, shall bear the certification of the dealer that the information contained therein and required by these regulations to be itemized is true. . . . The last names and license numbers of all salesmen who participated in negotiating the sale shall also be inserted on each such invoice and each such contract, and they shall be identified thereon as such salesmen. All information required by these regulations to be inserted in blank spaces (other than signatures) shall be filled in by typewriter, or by writing such information legibly in print style."

Section 3.10. *Prohibited Contract Provisions* –

> (a) Waiver of Regulations. No person shall include in any retail installment contract any provision waiving or purporting to waive any provision of these regulations. Any provision included in any retail installment contract which waives or purports to waive any provision of these regulations shall be void and of no effect.

Section 4.2. *Refund of Finance Charge on Prepayment* –

> If any buyer prepays the balance due under an instrument of security or a refinancing contract, as provided in Section 4.1 of these regulations, he shall be entitled to receive a refund credit thereon for such prepayment. The amount of such refund credit shall be computed according to what is commonly known as "the rule of 78ths", that is, it shall represent at least as great a proportion of the finance charge or refinance charge as (i) the sum of the monthly balances beginning on the next day if the prepayment is made on the monthly anniversary date of an installment under the retail installment contract or refinance contract . . .

STATEMENT OF THE CASE

Pursuant to Section 40-902(c), D. C. Code (1967 Edition), 74 Statutes At Large, at page 72, petitioners filed a civil action for damages for wrongful repossession of

an automobile which was repossessed in violation of the District of Columbia Automobile Financing Act,[9] Title 5AA, D. C. Rules and Regulations,[10] and the criminal[11] laws of the District of Columbia. The facts are undisputed. The complaint alleged that on or about July 14 or 15, 1969, petitioners, husband and wife, entered into a conditional sales contract with the respondent, whereby the petitioners agreed to buy and the respondent agreed to sell a new 1969 Ford Ltd. The total finance price including all finance and other charges ancillary to the sale was $3,898.08. The foregoing amount was to be paid by the petitioners in 36 consecutive monthly installments commencing August 28th, 1969, and in the amount of $108.28. In addition to the $3,898.08, petitioners paid a cash down payment of $653.66. The total amount then to be paid by the petitioners including the cash sum down payment and the 36 equal consecutive installment payments was $4,551.74. Respondent failed to execute the contract in compliance with the statutes and regulations involved herein. See Section 3.1(b), Title 5AA, Regulations Involved, *supra*.

Petitioners concede that they became delinquent in their monthly payment, for December 1971 and January 1972, and as a consequence thereof the respondent without notice or judicial process, but by self-help, broke into the motor vehicle and drove it away or repossessed it, all in

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[9] See Statutes Involved, *supra*.

[10] See Regulations Involved, *supra*.

[11] 37 Stat. 656, D. C. Code, 1967 Edition, Section 22-2204.

violation of the criminal[12] laws, and the District of Columbia Automobile Financing Act and regulations promulgated pursuant thereto. See *Commentary*: at pages 1091-1092, Volume 37, George Washington Law Review, "Repossession". See also, Section 5.1, Title 5AA, D. C. Regulations.

Petitioners redeemed the automobile within 72 hours by prepaying the balance of $855.69. Respondent upon acceptance of the prepayment of the balance due under the instrument of security failed to refund or credit the petitioners with a rebate under the D. C. Rules and Regulations, Title 5AA, Section 4.2; hence, petitioners filed a civil suit for damages of $5,000.00, approximately. A hearing was held before the Honorable Eugene N. Hamilton, Judge, D. C. Superior Court. The trial court concluded "as a matter of law that paragraph 8 of the said contract is in conformity with and not in violation of the laws of the District of Columbia." The trial court and

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[12] 37 Stat. 656, D. C. Code (1967 Edition), Section 22-2204, provides in pertinent part –

> "Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space, an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use, or purpose shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment."

appellate courts relied upon D. C. Code, Section 28:9-503[13] (1967 Edition). This provision of the District of Columbia Uniform Commercial Code is subordinate[14] to the District of Columbia Automobile Financing Act. See Statutes Involved, *supra.* Section 28:9-203(2), reads in significant part:

> "A transaction, although subject to this article, is also subject to chapter . . . 9 of Title 40, relating to installment sales of motor vehicles, and in case of conflict between the provisions of this article and any such statute, the provisions of such statute control."

Chapter 9 of Title 40 and regulations enunciated pursuant thereto require the respondent to insert the "last names and license numbers of all salesmen who participated in negotiating the sale" on each car invoice or conditional installment sales contract and that they "be identified thereon as such salesmen." Respondent's failure to comply

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13 "Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unsuable, and may dispose of collateral on the debtor's premises under section 28:9-504."

14 See footnote 77, at page 1079, 37 George Washington Law Review (1969-70), "Local Control of Retail Installment Sales", by Donald P. Rothschild.

therewith invalidated paragraph 8 of the conditional sales contract and precluded or made illegal the repossession.

The trial court asserted and the appellate court affirmed that petitioners "redeemed the said vehicle on February 11, 1972 and when they did so redeem the vehicle, they executed and delivered to the defendant a release and hold harmless agreement with respect to any claims arising out of that repossession." The record is devoid of any agreement evidencing the signature of petitioner, Charzel S. Spellers.

REASONS FOR GRANTING THE WRIT

There is manifest error in the construction and application and interpretation of an Act[15] of Congress and regulations[16] promulgated pursuant to that Act, in the following respects:

(A)

The "Conditional sales contract and paragraph 8 thereof" is invalid for the reason that the contract does not include matter required by the Act and Regulations. See certified record page 2, Superior Court Record page 17(a) – the omission in the contract is indicated as: "Salesman _____, No. _____." Section 40-902(e)(1), (i), D. C. Code, 1967 Edition, governs "the form and substance

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15 Public Law 86-431, 74 Stat. 70, Section 2(e)(1), D. C. Code (1967 Edition), Section 40-902(e)(1). See also, Statutes Involved, *supra.*

16 D. C. Rules and Regulations, Title 5AA. See also, Regulations Involved, *supra.*

of instruments of security." Section 3.1(b), Title 5AA, D. C. Rules and Regulations, provides, *inter alia,* that the original retail installment contract shall include the "last names and license numbers of all salesmen who participated in negotiating the sale" and "they shall be identified thereon as such salesmen." Congress authorized the Commissioner or Commissioners to make and enforce regulations as is deemed appropriate to carry out the purposes of the District of Columbia Automobile Financing Act. See *Hearings On H.R. 10683,* 86th Congress, Second Session (1960), House District of Columbia Committee, Library of Congress Reference MRR, ALC, U.S., 86th Congress Hearings, House District of Columbia Committee, J 74 .A23.

(B)

The "Car Invoice" which is part and parcel of the "Conditional Sales Contract and paragraph 8" is invalid for the reason that the "Car Invoice" does not include the matter required by the Act of Congress and D. C. Rules and Regulations. See certified record page 3, Superior Court Record page 17(c) – the omission is indicated as: "I hereby certify the information is correct as shown hereon _____

_____ (seal)." Certification of Dealer or Authorized Agent

Public Law 86-431, Sections 2(e)(1) and 2(2); and Section 3.1(b), Title 5AA, D. C. Rules and Regulations, *supra,* require that the original and each completed "Car Invoice" shall bear the certification of the dealer that the information contained thereon and required by these regulations to be itemized is true. The "Car Invoice" is not signed or signature affixed thereto, certifying that the information set forth in the "Car Invoice" is true, as required by the Act and Regulation.

(C)

Respondent failed to comply with the Congressional Mandate and Regulations enunciated pursuant thereto, relating to "Prepayment of Balance Due and Refund", Section 4.2, Title 5AA, D. C. Rules and Regulations. Record filed herewith, page 4, Superior Court Record page 17(d). Petitioners redeemed the motor vehicle Febuary 11, 1972 and respondent failed to rebate or refund. The payment receipt reads: "Account No. TM-1233 Amount paid: $855.69 Late Charge: $5.00 Check: $855.69 Cash: _____ Refunded: _____." Pursuant to Public Law 86-431 and D. C. Rules and Regulations – If any buyer prepays the balance due under an instrument of security or a refinancing contract, he shall be entitled to receive a refund credit thereon for such prepayment. Title 5AA, at page 27, D. C. Rules and Regulations.

(D)

The "release or convenant not to sue" has no application to the claim or rights of petitioner, Charzel S. Spellers, and is null and void. The statement reads, at page 3 of Certified Record filed herein, page 25 –

"To Whom It May Concern:

This is a general release to hold Steuart Motor Company harmless from all claims arising from repossession of one 1969 LTD HT Serial No. 255255, belong to @ #$%¢&*(*& ¢%@#$%. Account #TM1233

This also constitutes as a release of all claims as to personal property.

x Charlie C. Spellers"

The husband cannot by his release or admissions prejudice the wife's claims or right of action against Steuart Motor Company, respondent herein. Compare: *Gallo v. Crocker* (C.A. 5, 1963), 321 F.2d 876. See also, E V I-D E N C E key numbers 248(2) & 248(3). At page 25 of the certified record filed herein, affidavit of petitioner, Charzel S. Spellers – "1. That I have never executed and delivered, or authorized the execution and delivery to the defendant, Steuart Motor Company, a release and hold harmless for any and all claims arising from the repossession of the motor vehicle."

The release is invalid between petitioner, Charlie C. Spellers and Steuart Motor Company, for failure of consideration, or a "quid pro quo." See "Waiver Restriction", Public Law 86-431, 74 Stat. 69, at page 72, *supra.*

CONCLUSION

For the foregoing reasons the writ should be granted.

Respectfully submitted,

CHARLIE C. SPELLERS,
Petitioner, and

CHARZEL S. SPELLERS,
Petitioner,
4305 – 19th Street, N. E.
Washington, D. C. 20018

APPENDIX

District of Columbia
Court of Appeals

FILED October 31, 1973

DISTRICT OF COLUMBIA
COURT OF APPEALS

/s/ Alexander L. Stevas
Clerk

No. 7326 January Term, 1973

CHARLIE C. SPELLERS :
and :
CHARZEL S. SPELLERS, *Appellants*, :
v. : **CA-4114-72**
STEUART MOTOR COMPANY :
t/a TRIANGLE MOTORS, *Appellee*. :

Appeal from the Superior Court of the District of Columbia, Civil Division.

BEFORE: Kelly, Gallagher and Yeagley, Associate Judges.

JUDGMENT

This is an appeal from a summary judgment entered by the trial court in favor of appellee (defendant) and a denial of a motion for summary judgment made by appellants (plaintiffs). We affirm the judgment of the trial court.

Appellants sued appellee for wrongful repossession of an automobile. The trial court found that the repossession

was accomplished pursuant to the terms of the conditional sales contract entered into between the parties and that said contract was not in violation of the laws of the District of Columbia.

Recognizing an added responsibility to pro se parties to examine their cases closely so that meritorious claims will not be overlooked, we have given especially careful consideration to all of the claims of error advanced by appellants since they have proceeded pro se in this matter.

Such a review of the record and briefs convinces us that the trial court's determination and judgment were correct.

Accordingly, it is this 31st day of October 1973

ORDERED and ADJUDGED that the judgment appealed from is affirmed.

PER CURIAM.

FOR THE COURT:

/s/ Alexander L. Stevas
Alexander L. Stevas,
Clerk.

No. 7326

[Certificate of Service]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

* * * * *

MEMORANDUM OPINION

This action was commenced on May 31, 1972 when the plaintiffs filed their Complaint in this matter for wrongful repossession of a motor vehicle. The plaintiffs' Complaint alleged that on or about the 14th or 15th of July, 1969, they entered into a conditional sales contract with the defendant whereby they agreed to buy and the defendant agreed to sell a 1969 Ford Ltd. The total financed price including all finance and other charges connected with the sale was $3,898.08. This amount was to paid by the plaintiffs in 36 consecutive monthly installments beginning on the 28th of August 1969, and in the amount of $108.28. In addition to the $3,898.08, the plaintiffs paid a cash down payment of $653.66. The total amount then to be paid by the plaintiffs including the cash down payment and the 36 equal consecutive installments payments was $4,551.74.

The plaintiffs allege that they became delinquent in their December 1971 and January 1972 payments, and as a result thereof the defendant without notice to the plaintiffs and "in violation of the Uniform Consumer Credit Protection Act" repossessed the said vehicle. Plaintiffs allege that this repossession was in violation of and in breach of the terms and conditions of the Automobile Disclosure Statement and the Conditional Sales Contract pursuant to which the vehicle was produced. The plaintiffs also allege that the acts of the defendant in repossessing the plaintiffs' vehicle were willful, unlawful, violent and malicious and as a result thereof they seek punitive damages in the amount of $4,551.74.

The defendant filed its Answer wherein it basically denied all of the allegations of the plaintiffs' Complaint, except that it admitted that it entered into a contract with the plaintiffs, and that the defendant did repossess the plaintiffs' car on February 10, 1972 pursuant to the provisions of the said contract after the plaintiffs became delinquent in the payments called for thereunder. The defendant also alleges that the plaintiffs redeemed the said vehicle on February 11, 1972 and when they did so redeem the vehicle, they executed and delivered to the defendant a release and hold harmless agreement with respect to any claims arising out of that repossession.

The plaintiffs then moved for judgment on the pleadings on the basis that the terms and conditions of both the conditional sales contract and the Regulations of the District of Columbia pursuant to which their vehicle was repossessed are in violation of the Criminal laws of the District of Columbia and, therefore, void. This Motion for Judgment on the pleadings was denied by the Court on July 17, 1972. Then on July 24, 1972 the plaintiffs filed their first Motion For Summary Judgment. The basis for that first Motion For Summary Judgment was again that the repossession of their car by the defendant was in violation of the Criminal laws of the District of Columbia. The plaintiffs again took the position that any insertion into the contract of any provision pursuant to which the defendant could repossess the plaintiffs' car without judicial process was null and void. This first Motion by the plaintiffs for Summary Judgment was denied on August 16, 1972.

The plaintiffs then filed the instant Motion for Summary Judgment, their second such Motion in this case, on September 15, 1972. This second Motion for Summary

Judgment is again based primarily on the same grounds as had been the previous Motion For Summary Judgment and the Motion For Judgment on the pleadings. The defendant then on October 6, 1972 filed its Motion for Summary Judgment.

The plaintiffs' second Motion For Summary Judgment and the defendant's Motion For Summary Judgment then came on for hearing before the Court pursuant to a previous setting therein. Upon the hearing of these Motions and the Court being fully advised and informed with respect to all matters relevant to this action the Court finds that there is no genuine issue of material fact with respect to the claims of these parties, and the Court finds that the plaintiffs' vehicle was repossessed pursuant to the terms and conditions of paragraph 8 of the conditional sales contract executed by the parties to this action which set out the terms and conditions of the transaction relating to the purchase by the plaintiffs and the sale by the defendant to the plaintiffs of the vehicle in question. The Court also concludes as a matter of law that paragraph 8 of the said contract is in conformity with and not in violation of the laws of the District of Columbia. See: D. C. Code § 28:9-503 (1967 Edition).

Therefore, the defendant is granted Summary Judgment dismissing the plaintiffs' Complaint. The plaintiffs' Motion For Summary Judgment is denied. Judgment is therefore entered for the defendant with costs against the plaintiffs to abide the event.

So Ordered.

/s/ Eugene N. Hamilton
Eugene N. Hamilton
Judge

December 22, 1972

[Certificate of Service]

SUPREME COURT, U. S.
APR 2 1974

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1376

CHARLES C. SPRAGUE and CHARNEL S. SPRAGUE,
Petitioners,

v.

STUART MOTOR COMPANY, t/a THAYER MOTORS,
Respondent.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

MILFORD F. SCHWARTZ
STANLEY J. KAMINSKI
Attorneys for Respondent
1511 K Street, N. W.
Washington, D. C. 20005

Wilkes & Artis, Printers, Inc., Washington, D. C.

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Certiorari should be denied since respondent (seller) had a right to repossess petitioners' automobile under a valid conditional sales contract and pursuant to existing law.

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Applicable Regulations:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1376

CHARLIE C. SPELLERS and CHARZEL S. SPELLERS,
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v.

STEUART MOTOR COMPANY, t/a TRIANGLE MOTORS,
Respondent.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Respondent Steuart Motor Company prays that this Court deny petitioners' request that a writ of certiorari issue to the District of Columbia Court of Appeals to review that Court's decision of October 31, 1973 affirming the judgment of the Superior Court of the District of Columbia entered December 22, 1972. The opinions of both lower courts have been reprinted in the Appendix to the Petition for a Writ of Certiorari. The Petitioners concede that there are no questions of con-

stitutional magnitude involved in this case (Petition, page 5); and respondent respectfully submits that there is no substantial federal question submitted herein. At issue here is merely petitioners' unwarranted and unsupportable assertions that the two District of Columbia courts which have already heard this case erred in applying the statutory law currently in force in the District of Columbia to the facts of this case. Since the two lower Courts have rendered their decisions in accordance with the applicable local law, which law is not in conflict with the decisions of this Court, the instant Petition should be denied.

STATUTES AND REGULATIONS INVOLVED

This case involves application of the following statutes and regulations, all of which are set forth in the Appendix hereto:

Statutes:

Title 28, D. C. Code, Section 9-503
Title 40, D. C. Code, Section 902(e)(1) and (f)
Title 40, D. C. Code, Section 903(c)

Regulations:

D. C. Regulations Governing the Business of Buying, Selling, and Financing of Motor Vehicles:

Section 501
Section 701

QUESTIONS PRESENTED

1. Whether respondent automobile dealer (Seller) had a right to repossess the petitioners' (Purchasers') automobile where (1) the petitioners had purchased

said automobile pursuant to a conditional sales contract between the parties, (2) the petitioners had become at least two months delinquent in their monthly payments, (3) said delinquency constituted a violation of the said conditional sales contract, and (4) the said conditional sales contract expressly provided that upon the purchasers' delinquency, the seller may repossess said vehicle.

2. Whether the trial court was correct in its ruling that paragraph 8 of the subject conditional sales contract conformed to and was not in violation of the laws of the District of Columbia.

COUNTERSTATEMENT OF THE CASE

On July 14, 1969, petitioners and respondent entered into a conditional sales contract (R. 2) under the terms of which respondent purchased a new 1969 4-door Ford LTD automobile. Petitioners were to make monthly payments of $108.28 on the 28th day of each month until the balance of the purchase price and finance costs were paid. Paragraph 8 of the said conditional sales contract provides:

> '8. In case he shall fail to pay any installment as herein agreed, or shall fail to perform any of the covenants herein contained on his part to be performed then the Purchaser consents that in any of such events, at the election of the Seller, all unpaid balance of said contract price and any other obligations shall forthwith be and become due and payable, and all payments theretofore made shall belong to and be retained by the Seller as liquidated damages for the non-fulfillment of this contract and Purchaser further agrees to deliver Car to the Seller immediately and upon his failure to do so Seller may, without notice or demand for performance or legal process, lawfully

> without breach of peace enter upon the premises where Car may be and remove same. Seller may take possession of any other property in Car at the time of repossession, wherever such other property may be therein, and hold same temporarily for Purchaser without liability on the part of Seller. Subject to law, Car may be sold with or without notice at private or public sale, at which the Seller hereof may be the Purchaser with or without having Car at the sale; the proceeds of such sale shall be applied to the actual costs thereof, the actual costs of repossession, reasonable repair and storage, and to any amount payable hereunder; Purchaser shall be liable to pay any remaining balance forthwith as liquidated damages for the breach of this contract and shall receive any surplus."

Throughout this litigation, as they did in their Petition in this Court, at page 10, petitioners have admitted that they were at least two months delinquent in their monthly installment payments at the time of repossession, and there has never been an issue over the fact that the respondent's repossession of the subject motor vehicle was the consequence of this delinquency. Repossession was effected overnight without a breach of the peace, while the automobile was parked on the street (see Transcript of deposition of Petitioners, pages 11, 12). Both parties also admitted that the petitioners redeemed the subject vehicle on February 11, 1972, the day following repossession (page 11 of Transcript of Deposition). Petitioners have argued and still maintain that the subject conditional sales contract is in violation of Section 40-902(f) of the D. C. Code (1967 Edition); that the Uniform Commercial Code relating to repossession (Title 28 D. C. Code, Section 9-503) is "subordinate to" the District

of Columbia Automobile Financing Act (Title 40 D. C. Code, Section 901 *et seq.*) and the rules and regulations promulgated thereunder; that respondent Steuart Motor Company violated the applicable law; and that therefore the petitioners should be awarded damages, including punitive damages. Respondents never offered proof, by affidavit or otherwise, that any action of Steuart Motor Company was taken maliciously or in a willful attempt to deprive petitioners of their property.

It should be noted further that although upon redemption of the automobile, male petitioner executed a release of the respondent on behalf of himself and his wife, the validity of this release was not the basis for the trial court's granting of summary judgment to respondent. The basis of the trial court's opinion was the admitted delinquency of the petitioners as being a breach of paragraph 8 of the lawful conditional sales contract.

REASONS FOR DENYING THE WRIT

Respondent Had a Right To Repossess Petitioners' Automobile Under the Valid Conditional Sales Contract and Pursuant To Existing Law

There was no question but that respondents were at least two months delinquent in their monthly payments at the time of the repossession (Petition, page 10). This being the case, respondent, in an effort to protect its collateral, seized this vehicle (see Affidavit of Frederick Donald Cissel, R. 38 and 39). Repossession was accomplished pursuant to paragraph 8 of the conditional sales contract (quoted, *supra*), and was accomplished as noted above without a breach of the peace. The law in the District of Columbia is well

settled that where, as in this case, a conditional vendee is in default and the provisions of the conditional sales contract provide for the peaceable repossession of the subject merchandise, the conditional vendor has a perfect right to repossess the merchandise. *W. T. Walker Furniture Co.* v. *Dyson*, 32 App. D. C. 90 (D.C.Cir., 1908); *Besner* v. *Smith, et ux*, 178 A. 2d 926 (D.C. Mun. App., 1962). The applicable statutory law, Title 28:9-503 [1] and Section 501 of the District of Columbia regulations governing the businesses of buying, selling, and financing motor vehicles [2] provide further substantial legal authority for the action taken in this case by respondent Steuart Motor Company. It is submitted that, contrary to petitioners' contention, the aforesaid regulations, which were promulgated pursuant to Title 40, D. C. Code, Section 902(e)(1), are neither inconsistent with nor do they take precedence over the Uniform Commercial Code, Title 28, Section 9-503 of the D. C. Code.

In short, the lower courts were correct in holding that the provisions of the subject conditional sales

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[1] "Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action . . ."

[2] "When a buyer is in default in the payment of any sum due under the instrument of security, or in the performance of any other condition which it lawfully requires him to perform in order to obtain title to the motor vehicle, or in the performance of any promise the breach of which is, by such instrument, expressly made a ground for repossessing such motor vehicle, the holder may repossess the motor vehicle. Unless the motor vehicle can be repossessed without a breach of the peace, it shall be repossessed by legal process. Nothing herein shall be construed to authorize a violation of the criminal law."

contract are legal and that the repossession in this case lawfully was made pursuant thereto.

As a reason for granting the Writ of Certiorari, petitioners contend that inasmuch as the respondent's salesman's license number was inadvertently omitted from the conditional sales contract (although his name, Gandy, appeared thereon) [R. 2], the said contract is void and, therefore, the petitioners are entitled to $4,551.74 as damages from respondent.[3] Respondent is unaware of any statutory, regulatory, or case law in support of petitioners' argument and petitioners have cited none. Section 701 of the applicable regulations provides for administrative sanctions for willful violations of the regulations, but does not provide for the voiding of any contractual obligations. All of the applicable law is contrary to petitioners' assertions, as was correctly determined by the two lower courts. Moreover, petitioners have not been "aggrieved"[4] by the inadvertent omission of the salesman's number from the contract; rather it was the *repossession* of the vehicle that was the basis of this lawsuit, a repossession which fully conformed to and was authorized by law.[5]

With respect to the petitioners' argument ("C" at page 15 of the Petition) that they did not receive proper credit for the finance rebate upon redemption, this Court's attention is respectfully directed to the Affidavit of Frederick Donald Cissel, which affidavit was annexed to respondent's Motion for Summary

[3] See reason "(A)", at page 13 of the Petition.

[4] See Title 40 D.C. Code, Section 903(e).

[5] Petitioners' second reason for granting the writ, "(B)", at page 14 of the Petition, concerning the car invoice is similarly without merit.

Judgment (R. 38, 39), evidencing that petitioners, in fact, received full and proper credit. Respondents did not offer any evidence to contest Mr. Cissel's sworn statements; they merely have repeated their unfounded and false accusations in three Courts.

Petitioners' fourth reason for granting the requested Writ, that the release of respondent executed by male petitioner did not bind the female petitioner (see "(D)" at page 15 of the Petition) is simply without merit since a simple reading of Judge Hamilton's December 22, 1972 Memorandum Opinion reveals that the Court did not rely on the said release in arriving at its decision.

Respondent respectfully submits that the two lower Courts properly have construed the applicable local law and applied same to the facts in this case.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari to the District of Columbia Court of Appeals should be denied.

Respectfully submitted,

MILFORD F. SCHWARTZ
STANLEY J. KRIEGER
Attorneys for Respondent
1511 K Street, N. W.
Washington, D. C. 20005
Tel. No. 783-1326

APPENDIX

APPLICABLE STATUTES:

Title 28, District of Columbia Code, Section 9-503

"Secured party's right to take possession after default.

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable and may dispose of collateral on the debtor's premises under section 28: 9-504. (Dec. 30, 1963, 77 Stat. 766, Pub.L. 88-243, § 1, eff. Jan. 1, 1965)."

Title 40, District of Columbia Code, Section 902(c)(1)

"The Council is hereby authorized to make, and the Commissioner is authorized to enforce, such regulations as the Council in its discretion deems appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions:

"(i) governing the form and substance of instruments of security;

"(ii) requiring that installment payments under instruments of security be made in substantially equal amounts and at regular intervals except (1) that the interval for the first installment payment may be longer than the other intervals; (2) that the final installment payment may be less in amount than the preceding in-

stallment payments; (3) that where a buyer's livelihood is dependent upon seasonal or intermittent income, one or more installment payments in the schedule of payments included in any such instrument of security may be reduced or omitted; and (4) that any contract covering a new motor vehicle to be used primarily as a demonstrator sold to a bona fide motor-vehicle salesman employed by the seller shall be exempt from the requirement that installment payments be in substantially equal amounts;

"(iii) requiring that amounts due under instruments of security may be prepaid in full and that the unearned charges, whether for finance, insurance, or for other purposes, attributable to or resulting from such prepayments shall be refunded or credited;

"(iv) establishing maximum delinquency, collection, repossession and other charges;

"(v) specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee or any other person entitled to payments from a retail buyer under an instrument of security;

"(vi) respecting the manner and methods of the sale or disposition of repossessed motor vehicles under such conditions, including without limitation, rights of redemption, as the Council deems advisable;

"(vii) requiring the books and records of persons engaged in the business of financing retail installment transactions to be subject to production for examination by the Commissioner."

Title 40, District of Columbia Code, Section 902(f)

"No provision shall be inserted in any retail installment contract whereby the buyer waives or purports to waive any provision of this chapter, and any such waiver or purported waiver shall be void and of no

effect. The Council is authorized in its discretion, by regulation (1) to prohibit the inclusion in any retail installment contract of any provision waiving or purporting to waive any provision of any regulation promulgated by the Council relating to retail installment transactions, and (2) to provide that any such waiver or purported waiver, shall be void and of no effect. (Apr. 22, 1960, 74 Stat. 69, Pub.L. 86-431, § 2.)"

Title 40, District of Columbia Code, Section 903(c)

"Any person aggrieved by the violation of any law or regulation applicable to the licensee's conduct of the licensed activity shall have, in addition to his right of action against such licensee, a right to bring suit against the surety on a bond authorized by this section, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee, or of any officer, agent, employee, or other person acting on behalf of said licensee, which is in violation of law or regulation in force in the District relating to the licensed activity. The provisions of the second, third, and the fifth subparagraphs of paragraph (b) of section 1-244, shall be applicable to each bond authorized by this section as if it were the bond authorized by the first subparagraph of such paragraph (b) of section 1-244: *Provided*, That nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries. (Apr. 22, 1960, 74 Stat. 71, Pub.L. 86-431, § 3.)"

APPLICABLE REGULATIONS:

District of Columbia Regulations Governing the Business of Buying, Selling, and Financing of Motor Vehicles:

Section 501. Repossession Authorized

"When a buyer is in default in the payment of any sum due under the instrument of security, or in the performance of any other condition which it lawfully requires him to perform in order to obtain title to the motor vehicle, or in performance of any promise the breach of which is, by such instrument, expressly made a ground for repossessing such motor vehicle, the holder may repossess the motor vehicle. Unless the motor vehicle can be repossessed without a breach of the peace, it shall be repossessed by legal process. Nothing herein shall be construed to authorize a violation of the criminal law."

Section 701. Penalties

"Any person who violates any provision of these regulations made pursuant to the Act of Congress approved April 22, 1960 (Public Law 86-431, 74 Stat. 69) shall be punished by a fine not exceeding $500 or by imprisonment for not more than six months, or both. Any person violating any other provision of these regulations shall be punished by a fine of not more than $300 or imprisonment for not more than 90 days."